



Site Remediation

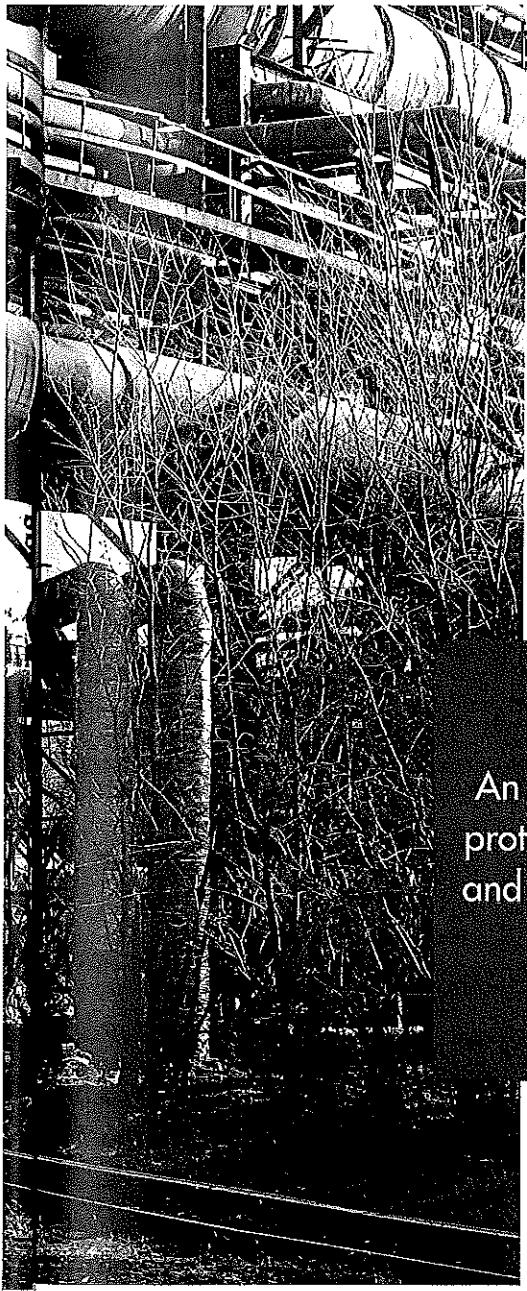
Working with Licensed Site Remediation Professionals

By John Shotter and Christina Remolina

The Site Remediation Reform Act (SRRRA) set forth drastic changes to the way in which sites are remediated in New Jersey. SRRRA establishes an affirmative obligation on responsible parties to remediate contaminated sites in a timely manner. In order to achieve this goal, SRRRA created a new category of remediation pro-

fessionals known as Licensed Site Remediation Professionals (LSRP). LSRPs will “step into the shoes” of the Department of Environmental Protection (NJDEP) to oversee the remediation of contaminated sites. SRRRA requires that the LSRP must comply with all remediation statutes and rules and consider NJDEP guidance when making remediation decisions.

As of May 7, 2012, with limited exceptions, all remediations in the State of New Jersey, without regard to when remediation was initiated, are to proceed under the supervision of a LSRP. In some sense, LSRPs take the place of the NJDEP, however, they are not the NJDEP. Indeed, the NJDEP still has the right to review and audit LSRP submissions up to and including a Response Action Outcome. Work



or simply do as clients ask. Thus, the relationship of an LSRP with his or her client is not the same as the past relationship enjoyed between a consultant and its client. There is no LSRP-client privilege like an attorney-client privilege. Clients and counsel must understand that the LSRP may not be able to follow past practices in every instance.

In addition, LSRPs have heightened duties with respect to reporting requirements not previously held by consultants in the past, which may run contrary to the interests of their client. For example, if an LSRP

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obtains specific knowledge that "a discharge has occurred on a contaminated site for which he is responsible" then the LSRP shall not only immediately verbally advise the person responsible for conducting the remediation (PRCR) of the discharge, but the LSRP must also notify the NJDEP. This reporting requirement may cause some level of friction between an LSRP and their client.

Who's the Client?

In this regard, a fundamental question that has arisen is "who is the LSRP's client?" SRRA itself and the NJDEP's rules provide no answer to this question. Indeed, a review of different LSRP contracts makes it abundantly clear that there are as many proposed answers to this question as there are different LSRPs themselves. While the starting presumption would necessarily be that he or she who retains and/or pays for an LSRP may be the LSRP's client, often situations arise where the relation-

ships of the parties to a remediation, or for a site subject to remediation, are complicated and blur the nature of the relationship of an LSRP to the involved parties. Simply put, a remediation may potentially involve owners, operators, sellers, landlords, tenants, insurers, buyers, sellers, adjoining neighbors, consulting firms, municipalities, counties, the NJDEP and more. While some LSRP contracts would purport to eschew the LSRP's duties to all these individuals, it is a valid question whether that type of proposed relationship is reasonable when one considers the duties and responsibilities SRRA bestows on the LSRP.

There has been no guidance from the NJDEP in this regard, and accordingly, future events, and likely litigation, will be required to tease out the tangles. However, as a starting point, LSRPs would benefit to take a cue from the legal profession in that, as attorneys have often learned to their consternation, their professional duties often are not in accord with the party who is paying for their services.

In sum, the LSRP is a new class of professional that has clear duties and responsibilities. However, it remains unclear as to whom LSRPs owe their "duty" to. Therefore, PRCRs can and should talk to individual LSRPs before and after retention in order to determine if there is a philosophical match between the client and the professional. Just as there are variations in the philosophy, experience, idioms and approach among judges and lawyers, the same differences in approach will be found in the LSRP community. PRCRs will need to use due care in selecting and using LSRPs for their sites. In addition, their contracts need to pay special attention to the concerns to the LSRP, their role as professionals, as well as their duties to protect public health and safety and the environment. 

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proposed and approved by a LSRP will be reported to the NJDEP, but such work can, and should, proceed without prior NJDEP approval. Because of this streamlined process, LSRPs are already doing work faster than the NJDEP could ever have done.

Added Responsibility

This added level of discretion afforded to LSRPs comes with added responsibilities. An LSRP needs to exercise independent professional judgment, comply with SRRA, make a reasonable effort to identify and obtain the relevant and material facts, data, reports and other information. Therefore, an LSRP's highest priority is to protect public health and safety and the environment; it is not to be a client advocate